

January 4, 2005

Richard Carlile
President
Santa Rosa Main Street
637 First Street
Santa Rosa, CA 95404

**Re: Your Request for Informal Assistance
Our File No. I-05-246**

Dear Mr. Carlile:

This letter is in response to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the “Act”).¹ Because your question, is in part, premature for the Commission’s consideration at this time and should be first considered by your code reviewing body under regulation 18329.5 (copy enclosed), we are providing informal assistance.²

QUESTIONS

1. Is the Advisory Board of the Downtown Business Improvement Area, formed pursuant to the Parking and Business Improvement Area Law of 1989 (Streets & Highways Code Section 36500, et seq.) subject to the conflict of interest code provisions of the Act?
2. Are the members of the Advisory Board of the Downtown Business Improvement Area, required to file statements under the provisions of section 87302.6 until such time as a conflict of interest code is approved?

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code § 83114; 2 Cal. Code of Regs. § 18329(c)(3), copy enclosed.)

CONCLUSIONS

1. The Advisory Board of the Downtown Business Improvement Area is a local government agency required by section 87300 to formulate and adopt a conflict of interest code.
2. Whether the members of the advisory board are filers under the city's conflict of interest code is a determination to be made by the Santa Rosa City Council, the code reviewing body.

FACTS

The City of Santa Rosa has passed a Downtown Business Improvement Area (BIA) ordinance under Streets and Highways Code section 36500 et. seq., the Parking and Business Improvement Area Law of 1989. Under this ordinance, businesses within the boundary area will be levied an assessment. Funds raised by the assessment will be devoted to improvements and activities within the BIA, including general promotion of business activities within the area; promotion of public events which benefit businesses within the area which will take place in the BIA; decorations of public places, and acquisition, construction, installation or maintenance of improvements noted in section 36510 of the Streets and Highways code. The ordinance requires the city council to appoint an advisory board under Streets and Highways Code section 36530. The ordinance also requires that all persons appointed to the advisory board shall represent and further the interests of the downtown BIA. Furthermore, it specifies that only persons who own or are an officer or shareholder in a business subject to an assessment may be appointed to the board. You have included a copy of this ordinance for our review.

Streets and Highways Code section 36530 mandates that the city council appoint the advisory board. Under this provision, the board must make a recommendation to the council on the expenditure of revenues derived from the levy of assessments, on the classification of businesses, and on the method and basis of levying the assessments. This section specifically allows the city council to limit membership to the advisory board to persons paying assessments. The advisory board is required to prepare a report for each fiscal year for which assessments are to be levied and collected. This report may propose changes to the boundaries of the BIA, the basis and method of levying the assessments, and any changes in the classification of businesses. The city council may approve the report as filed by the board, or it may modify any part of the report and approve it as modified (Streets & Highways Code section 36533(a) and (c)).

The advisory board will be made up of 11 members: five of the members from Santa Rosa Main Street (SRMS) and 6 members from within the Downtown BIA. SRMS is a nonprofit group of volunteers. It has a board of directors and an Executive Director. Its stated mission is to establish a Main Street district consisting of Santa Rosa Courthouse Square, Santa Rosa Plaza, and Historic Railroad Square. SRMS follows the

National Main Street four-point approach to community revitalization. This approach encompasses work in four distinct areas – design, economic restructuring, promotion, and organization – to address a commercial district’s needs. SRMS’s bylaws specify that it is a corporation organized and operated exclusively for civic purposes within the meaning of section 501(c)(3) of the Internal Revenue Code. The Board of Directors of SRMS is composed of members from Historic Railroad Square, Old Courthouse Square, Santa Rosa Plaza and the Santa Rosa Chamber of Commerce. There are also four ex-officio members: the executive director, the immediate past president and a representative from the Santa Rosa City Council and Santa Rosa City staff. These latter two city positions are non-voting, one-year terms. The directors receive no compensation for their service as directors.

ANALYSIS

The first question posed by your advice request is whether the advisory board is a local government agency. We conclude that the advisory board is a local government agency. (Section 82041.) Section 82041 defines “local government agency” as “a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.” In the past we have advised:

“Since it appears that the Advisory Board will be responsible for negotiating and entering into contracts to perform the improvements and activities previously approved, the Advisory Board is making final governmental decisions.... Accordingly, we conclude that the Advisory Board of the Broadway Business Improvement District is a ‘local government agency’ and the persons serving on the board are ‘public officials’ within the meaning of the Act.” (*Alperin* Advice letter, No. I-94-177.)

The second question posed in your letter is whether the members of the advisory board must file statements of economic interests. However, regulation 18329.5(a)(3)(B) provides that the Commission shall not render formal written advice or informal assistance regarding the application of an agency’s conflict of interest code to specific individual when the Commission is not the code reviewing body unless the agency first requests a determination from the code reviewing body for such conflict of interest code. Thus, this determination is first to be made by the city council as the code reviewing body. (Sections 87301 and 82011; see also regulation 18329.5.)

If you have any questions regarding this process, please feel free to contact the Technical Assistance Division at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: John W. Wallace
Assistant General Counsel
Legal Division

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